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BEFORE THE ARIZONA CORPORATION**COMMISSIONERS**

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

Arizona Corporation Commission

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DOCKETED BY

**IN THE MATTER OF THE FORMAL COMPLAINT
OF ROGER AND DARLENE CHANTEL,**

DOCKET NO. E-01750A-09-0149

COMPLAINANTS,

v.

MOHAVE ELECTRIC COOPERATIVE, INC.,

RESPONDENT.

ORIGINAL

PROCEDURAL ORDER
(Setting Oral Arguments)**BY THE COMMISSION:****Background**

On March 24, 2009, Roger and Darlene Chantel ("Chantels" or "Complainants") filed a formal complaint ("Complaint") with the Arizona Corporation Commission ("Commission") against Mohave Electric Cooperative, Inc. ("MEC" or "Company"). The Complainants alleged MEC improperly disconnected the Chantel's electric service in violation of Arizona Administrative Code ("A.A.C.") R14-2-208 and R14-2-211.

MEC filed its Response to Formal Complaint and Motion to Dismiss on April 10, 2009, denying the allegations and moved to have the Complaint dismissed.

A Procedural Order docketed on July 28, 2009, denied MEC's Motion to Dismiss.

On December 10, 2009, the Chantels filed a Motion to Recess Formal Complaint, explaining that they had filed a lawsuit against MEC in Mohave County Superior Court, and requesting that the Complaint docket be stayed pending the outcome of the superior court action.

A Procedural Order docketed December 24, 2009, granted the Complainants' request.

The stay on the Complaint proceeding was still in place when, on January 11, 2011, a December 7, 2010, email from Mr. Chantel to the Commission, was docketed. The email contained a copy of a letter from Mr. Chantel to MEC board members requesting that MEC "remove the

1 abandoned unsafe lines and poles that exist on [the Chantel's] property."¹ Copies of another letter
2 received by the Commission from Mr. Chantel via email on April 3, 2011, were docketed on April 4
3 and April 7, 2011. In the letter, Mr. Chantel requested that the Commission issue an order directing
4 MEC to remove its equipment. Over one year later, on August 8, 2012, a letter from Mr. Chantel
5 dated August 1, 2012, was docketed requesting that the Commission direct MEC to file an
6 application relating to the abandonment of MEC's lines on the Chantel's property pursuant to A.A.C.
7 R14-2-202.

8 On August 24, 2012, MEC filed its Response to Complainant's (*sic*) August Letters noting
9 that MEC had de-energized the lines on the Complainants' property at the direction of Mohave
10 County because the Chantels created a hazardous condition by constructing a building under the
11 power lines. MEC asserted that the lines no longer provide service to the public and, as such, A.A.C.
12 R14-2-202 does not apply. MEC attached as an exhibit to its Response a copy of its letter to the
13 Chantels acknowledging their request to have the line removed from the property, but stating that,
14 "throughout the judicial proceedings you have declined to pay the cost of removal or to permit MEC
15 to enter your premises to remove its poles and lines which remain its property."²

16 The Complainants filed their Response to Mohave Electric Cooperative's Response to
17 Complainant's August Letters on August 30, 2012, disputing MEC's arguments regarding the
18 applicability of A.A.C. R14-2-202.

19 On September 18, 2012, the Complainants docketed a letter dated September 13, 2012,
20 requesting that the Commission measure the distances between MEC's power poles along Highway
21 66 from mile marker 66 to mile marker 80, alleging that the poles were out of compliance with safety
22 regulations.

23 MEC did not file a response to the Chantel's letter.

24 On October 31, 2012, the Commission's Utilities Division ("Staff") docketed a letter to the
25 Chantels dated October 3, 2012, from the Director of the Utilities Division responding to their
26 request. The letter recounted that Staff had contacted Mr. Chantel regarding his allegations and
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¹ Letter dated December 7, 2010, docketed January 11, 2011. This letter did not request Commission involvement.

² MEC Response to Complainant's August Letters docketed August 24, 2012; Exhibit A, page 2.

1 offered either to open an informal complaint or to assist him in reactivating the Complaint docket, but
2 Mr. Chantel had declined Staff's offer.

3 The Chantels did not file any request or motion to amend their Complaint to include their
4 claim regarding the MEC's alleged abandonment of its equipment on the Chantel's property or their
5 allegation that MEC's equipment abutting Highway 66 did not meet safety requirements.

6 A Procedural Order docketed on October 29, 2012, confirmed the stay on the Complaint
7 proceedings pending the final disposition of the Chantel's Mohave County Superior Court action.

8 On July 12, 2013, MEC filed a Motion to Reconsider Motion to Dismiss Formal Complaint
9 ("Motion to Reconsider"). MEC attached to the Motion to Reconsider as an exhibit a copy of the
10 Court of Appeals' April 16, 2013, Memorandum Decision affirming the Mohave County Superior
11 Court's grant of summary judgment in MEC's favor. In light of this outcome, MEC requested
12 reconsideration of its original Motion to Dismiss. MEC asserted the Commission is bound by the
13 doctrine of *res judicata* and requested that the Commission dismiss the Complaint in its entirety.

14 On August 14, 2013, the Chantels docketed their Response to Mohave Electric Cooperative's
15 Motion to Reconsider Motion to Dismiss Formal Complaint and their Motion to Transfer Issues in
16 Complaint to the Citizens' Jurisdiction ("Motion to Transfer").

17 On August 26, 2013, MEC filed its Reply to Complainants' Response to Motion to
18 Reconsider Motion to Dismiss Formal Complaint and its Response to Complainants' "Motion to
19 Transfer Issues in Complaint to the Citizens' Jurisdiction."

20 On September 4, 2013, the Chantels docketed a Motion to Enforce Arizona Administrative
21 Codes R14-2-211(A)(5)(6), R14-2-202(B)(1)(2), R14-2-208(A)(1) and (F)(1), and attached a
22 proposed form of Judicial Order ("Motion to Enforce").

23 On September 9, 2013, a Procedural Order was filed lifting the stay on the docket and setting
24 a procedural conference for September 25, 2013, for the purpose of taking oral arguments on MEC's
25 Motion to Dismiss and Motion to Reconsider, and on the Chantels' Motion to Transfer and the
26 Motion to Enforce. The Procedural Order also directed MEC to file a response to the Chantels'
27 Motion to Enforce by September 23, 2013.

28 ...

1 On September 16, 2013, the Chantels filed a Motion to Postpone Most of the Issues at the
2 Hearing on September 25, 2013 ("Motion to Postpone"), and a Motion to Hear Issues on the
3 Emergency Notice of Action Submitted to Steven Olea of the Arizona Corporation Commission
4 ("Motion to Hear Issues").³ In their Motion to Postpone, the Complainants asserted that the parties
5 had planned an inspection of MEC's lines along Highway 66 and requested that most of the issues set
6 for oral argument at the September 25, 2013, proceeding be postponed pending results of the
7 inspection. The Chantels requested that their Emergency Notice of Action be heard instead.

8 On September 23, 2013, MEC submitted its Response to Complainants' Motions 1) to
9 Enforce, 2) to Postpone and 3) to Hear Issues.

10 A Procedural Order was docketed September 23, 2013, vacating the September 25, 2013,
11 procedural conference.

12 On September 30, 2013, the Chantels filed a reply to MEC's September 23, 2013, Response.

13 MEC filed a Motion for Procedural Conference on October 8, 2013, requesting that a
14 procedural conference be set for the purpose of hearing oral arguments on all outstanding motions.

15 On October 16, 2013, the Chantels docketed a Request to Decline Motion for Oral Argument
16 in a Procedural Conference and that the Administrative Law Judge Move Forward in Issuing of the
17 Enforcement Order. The Chantels argued that MEC's Motion should be denied because no new
18 evidence or testimony can be presented that will add to that already submitted by the parties.

19 On October 30, 2013, a Procedural Order was docketed setting a telephonic procedural
20 conference for November 19, 2013, at 10:00 a.m., to address certain procedural questions prior to
21 taking oral arguments on any outstanding motions. The Procedural Order advised the parties that no
22 substantive matters would be considered during the proceeding. A toll-free telephone number was
23 provided for the parties' use.

24 The telephonic procedural conference convened on November 19, 2013, and Larry Udall, on
25 behalf of MEC, and Wes Van Cleve, on behalf of Commission Staff, attended telephonically. A
26 court reporter was also present by telephone to record the proceeding. After postponing the

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28 ³ The Chantels included their "Emergency Notice of Action" as an attachment to their Response to Mohave Electric Cooperative's Motion to Reconsider Motion to Dismiss Formal Complaint docketed on August 14, 2013.

1 procedural conference for 15 minutes, the Complainants did not appear telephonically or in person
2 and the proceeding was cancelled. MEC and Commission Staff were advised that a Procedural Order
3 would be issued setting another procedural conference for the sole purpose of determining whether
4 the Chantels desired to proceed with their Complaint.

5 On November 25, 2013, a Procedural Order was docketed setting a procedural conference for
6 December 16, 2013, to discuss whether the Chantels wished to continue with their Complaint. The
7 Procedural Order advised the Complainants that failure to attend the procedural conference could
8 result in administrative closure of the docket.

9 The procedural conference convened on December 16, 2013, with both parties attending
10 telephonically. The Complainants stated that they desire to pursue their Complaint. At the
11 conclusion of the procedural conference, the parties were advised that a Procedural Order would be
12 issued setting a telephonic procedural conference to address the procedural questions originally
13 intended for the cancelled November 19, 2013, proceeding. The parties were also advised that no
14 substantive issues would be addressed at the procedural conference and they would not be taken up
15 until all procedural points had been resolved.

16 Pursuant to a Procedural Order docketed December 31, 2013, a procedural conference was
17 held on January 28, 2014. The Chantels, MEC's counsel, and Staff attended telephonically. The
18 parties clarified their positions on certain matters and various procedural and scheduling issues were
19 discussed. At the conclusion of the procedural conference, the parties were advised that a Procedural
20 Order would be issued setting a procedural conference for the purpose of taking oral arguments the
21 parties' outstanding motions.

22 Discussion

23 The motions yet to be ruled on are MEC's Motion to Reconsider, and the Complainants'
24 Motion to Transfer, Motion to Enforce, and Motion to Hear Issues. In addition, the Complainants
25 raised two additional issues sometime after they filed the original Complaint. The Chantels
26 requested: 1) that the Commission require MEC to file an application to abandon MEC's equipment
27 located on the Chantel's property; and 2) that the Commission investigate whether MEC's power
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1 poles located along Highway 66 between mile marker 66 and mile marker 80 are in compliance with
2 all safety regulations.

3 Although the Chantels raised the question regarding MEC's alleged abandonment of the
4 Company's equipment situated on the Complainants' property almost two years after they filed their
5 Complaint, the basis for the allegation and requested remedy generally arises from the same set of
6 circumstances as those underlying the original Complaint. Additionally, MEC subsequently
7 responded to the Chantel's allegations. At the January 29, 2014, procedural conference MEC agreed
8 that it had received adequate notice and opportunity to respond to this claim.⁴

9 Accordingly, it is reasonable to permit the Chantel's Complaint to be amended to include
10 consideration of the Complainants' request that the Commission direct MEC to file an application for
11 abandonment pursuant to A.A.C. R14-2-202.

12 The Chantel's assertions that MEC's power poles along Highway 66 do not comply with
13 safety regulations, however, do not arise from the specific set of facts forming the original
14 Complaint. Further, the Chantels brought this new claim to the Commission approximately three
15 years after filing the original Complaint. Staff had offered to open an informal complaint on the
16 Chantel's new allegation, but the Chantels declined.

17 During the January 28, 2014, procedural conference, Staff related it had investigated the
18 Chantel's claims and prepared written report on Staff's findings, but did not docketed the report
19 because of Staff's concern about the attenuation of the facts supporting the Complaint from the status
20 of the lines along Highway 66.⁵

21 Given the circumstances, MEC has not had adequate notice and opportunity to respond to this
22 claim. However, it is possible that the Chantel's assertions regarding the lines are unfounded and the
23 question can be resolved without further action. Additionally, although it is the recommended
24 approach, A.A.C. R14-3-106(M) does not require that an issue be heard through an informal
25 complaint before a formal complaint may be made. Further, A.R.S. § 40-246(B) states: "All matters
26 upon which complaint may be founded may be joined in one hearing, and a complaint is not defective
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28 ⁴ Transcript of January 28, 2014, Procedural Conference, pages 13 – 15. (Hereinafter, "Tr. at ____.")

⁵ Tr. at 8 – 10.

1 for misjoinder or nonjoinder of the parties or causes.... The commission need not dismiss a complaint
2 because of the absence of direct damage to the complainant.”

3 In the interest of administrative efficiency, Staff shall file the written report on its inspection
4 of MEC’s equipment along Highway 66 in this docket in order to provide MEC and the
5 Complainants with an opportunity to review the report. The parties will then have an idea whether
6 the matter should proceed through a complaint process, and, if so, whether the Chantel’s Complaint
7 should be amended to include these allegations or whether they should be raised in a separate docket.
8 In any event, MEC will be afforded adequate opportunity to respond, if necessary.

9 Based on the background and discussion of the issues, each party shall submit legal briefs
10 addressing the issues outlined below.

11 **Complainants**

12 The Chantels’ opening brief shall include a discussion of the following:

- 13 ● Complainants shall state whether they wish to amend their Complaint to include the
14 allegations regarding MEC’s equipment along Highway 66;
- 15 ● Complainants shall define “Citizens Jurisdiction” as used in the Motion to Transfer,
16 and shall cite valid legal authority supporting the “citizens court’s” jurisdiction over a
17 public utility corporation surmounting that of the Commission;⁶ and
- 18 ● Complainants shall explain why the Commission should act on the Motion to Enforce
19 and the Motion to Hear Issues prior to any evidentiary hearing on the Complaint
20 (assuming the Complaint is not dismissed), and shall provide valid legal authority that
21 supports the Commission’s authority to do so.

22 Additionally, the Chantels shall file a reply brief addressing MEC’s legal arguments stated in
23 its responsive brief.

24 **MEC**

25 MEC’s responsive brief shall include a discussion of the following, along with valid legal
26 authority supporting the Company’s positions:

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28 ⁶ Valid legal authority includes case law, statutes, Commission rules, regulations and Decisions, and the Arizona Rules of Civil Procedure.

- 1 • MEC shall respond to the Complainants' position regarding Staff's written report
- 2 regarding its equipment abutting Highway 66, as necessary;
- 3 • MEC shall respond to the Complainants' arguments regarding the Motion to Transfer,
- 4 the Motion to Enforce, and the Motion to Hear Issues; and
- 5 • MEC shall address whether the allegations regarding abandonment of its lines on the
- 6 Complainants' property pursuant to A.A.C. R14-2-202 are subject to dismissal under
- 7 the doctrine of *res judicata*.

8 IT IS THEREFORE ORDERED that a **procedural conference** in this matter shall be held on
9 **August 5, 2014, at 10:00 a.m.**, in Hearing Room No. 2 at the Commission's Phoenix offices, 1200
10 West Washington Street, for the purpose of hearing oral arguments on the Company's Motion to
11 Reconsider, and on the Chantel's Motion to Transfer, Motion to Enforce, and Motion to Hear Issues,
12 as well as arguments on whether the Complaint should be amended to include the allegations
13 regarding MEC's equipment along Highway 66.

14 IT IS THEREFORE ORDERED that **Staff shall file in this docket copies of its written**
15 **report** regarding its inspection of MEC's poles abutting Highway 66 **on or before June 9, 2014**, and
16 shall attend the August 5, 2014, procedural conference.

17 IT IS FURTHER ORDERED that **the Complainants shall file their opening brief on or**
18 **before June 25, 2014.**

19 IT IS FURTHER ORDERED that **MEC shall file its responsive brief on or before July 16,**
20 **2014.**

21 IT IS FURTHER ORDERED that **the Complainants shall file their reply brief on or before**
22 **July 30, 2014.**

23 IT IS FURTHER ORDERED that during oral arguments the parties may reference pleadings
24 and documents that have been docketed in this matter prior to the date of the procedural conference,
25 and that any documents, pleadings and legal authority each party intends to rely upon to support their
26 respective legal positions shall be **filed with Docket Control on or before July 30, 2014.**

27 IT IS FURTHER ORDERED that **presentation of testimony or new evidence and/or**
28 **exhibits shall not be permitted during oral arguments.**


IT IS FURTHER ORDERED that, in order to promote efficiency, the Administrative Law Judge may impose a time limit for presentation of legal argument on each motion, and on the moving party's rebuttal argument.

IT IS FURTHER ORDERED that the *Ex Parte* Rule (A.A.C. R14-3-113-Unauthorized Communications) applies to this proceeding and shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

IT IS FURTHER ORDERED that parties must comply with Rules 31 and 38 of Rules of the Arizona Supreme Court and A.R.S. §40-243 regarding practice of law and admission *pro hac vice*.

IT IS FURTHER ORDERED that that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 2nd day of June, 2014.


BELINDA A. MARTIN
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed
this 2nd day of June, 2014, to:

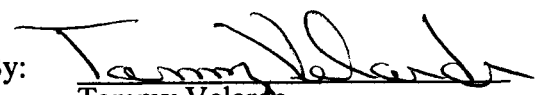
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